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COMPILATION OF LAWS,

AND

REGULATIONS AND DECISIONS THEREUNDER,

RELATING TO THE

CREATION AND ADMINISTRATION

OF

PUBLIC FOREST RESERVES.

ISSUED NOVEMBER 6, 1900.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1900.





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AND

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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 6, 1900.

The following compilation of existing laws relative to public forest reserves, with the rules and regulations thereunder, and decisions in relation thereto, is issued for the information of those concerned.

BINGER HERMANN,
Commissioner.

SYNOPSIS OF LAWS RELATING TO PUBLIC FOREST RESERVES.

GENERAL LAWS.

ACT OF MARCH 3, 1891 (26 Stat., 1095):

Section 24 thereof authorizes the President of the United States to establish public forest reserves.

ACT OF JUNE 4, 1897 (30 Stat., 34-36):

Provides for the administration of forest reserves created under section 24 of the act of March 3, 1891 (26 Stat., 1095).

ACT OF FEBRUARY 28, 1899 (30 Stat., 908):

Authorizes the Secretary of the Interior to rent or lease suitable spaces and portions of ground near, or adjacent to, mineral, medicinal, or other springs within public forest reserves.

ACT OF MARCH 3, 1899 (30 Stat., 1095), "Sundry Civil;" ACT OF FEBRUARY 9, 1900 (31 Stat., 21), "Urgent Deficiency," and ACT OF JUNE 6, 1900 (31 Stat., 614), "Sundry Civil," contain the following provision:

Provided further, That forest agents, superintendents, supervisors, and all other persons employed in connection with the administration and protection of forest reservations shall, in all ways that are practicable, aid in the enforcement of the laws of the State or Territory in which said forest reservation is situated in relation to the protection of fish and game.

ACT OF MARCH 3, 1899 (30 Stat., 1097), "Sundry civil:"

Provides, "That hereafter all standard, meander, township, and section lines of the public land surveys shall, as heretofore, be established under the direction and supervision of the Commissioner of the General Land Office, whether the lands to be surveyed are within or without reservations, except that where the exterior boundaries of public forest reservations are required to be coincident with standard, township, or section lines such boundaries may, if not previously established in the ordinary course of the public land surveys, be established and marked under the supervision of the Director of the United States Geological Survey whenever necessary to complete the survey of such exterior boundaries."

ACT OF MARCH 3, 1899 (30 Stat., 1233), "Deficiency:"

Provides, "That in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."

ACT OF MAY 5, 1900 (31 Stat., 169):

Amends act of February 24, 1897 (29 Stat., 594), entitled "An act to prevent forest fires on the public domain."

ACT OF JUNE 6, 1900 (31 Stat., 614):

Provides, "That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the act of June fourth, eighteen hundred and ninety-seven, entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes,' shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof."

ACT OF JUNE 6, 1900 (31 Stat., 661):

Amends certain provisions in the act of June 4, 1897 (30 Stat., 35), respecting sale of forest reserve timber.

LOCAL LAWS.**ACT OF FEBRUARY 20, 1896 (29 Stat., 11):**

Opening certain forest reservations in the State of Colorado for the location of mining claims, etc.

ACT OF MAY 18, 1898 (30 Stat., 418):

Grants the Santa Fé and Grand Canyon Railroad Company right of way through the Grand Canyon Forest Reserve in Arizona.

ACT OF JUNE 27, 1898 (30 Stat., 493):

Grants the Cripple Creek District Railway Company right of way through the Pike's Peak Timber Land Reserve in Colorado, and also over certain public lands outside of the reserve.

ACT OF JULY 8, 1898 (30 Stat., 729):

Grants the Cripple Creek Short Line Railway Company right of way through the Pike's Peak Timber Land Reserve in Colorado, and also over certain public lands outside of the reserve.

ACT OF JANUARY 10, 1899 (30 Stat., 783):

Grants the Saginaw Southern Railroad Company right of way through the San Francisco Mountains Forest Reserves in Arizona, and also over certain public lands outside of the reserves.

ACT OF FEBRUARY 28, 1899 (30 Stat., 910):

Grants to the Pasadena and Mount Wilson Railway Company right of way through the San Gabriel Forest Reserve in California; and also authorizes the Secretary of the Interior to sell to the said railway company, its successors and assigns, certain tracts of land along said right of way for stations, hotels, astronomical observatories, etc.

ACT OF JUNE 6, 1900 (31 Stat., 657):

Grants to the town of Flagstaff, Ariz., right of way over certain lands in the San Francisco Mountains Forest Reserves in Arizona, for a pipe line to be used in the conveyance of water.

ACT OF MARCH 3, 1899 (30 Stat., 1095):

Makes provision respecting special homestead privileges for certain settlers in the Black Hills Forest Reserve, in the State of South Dakota.

COMPILATION OF LAWS, AND REGULATIONS AND DECISIONS THEREUNDER, RELATING TO THE CREATION AND ADMIN- ISTRATION OF PUBLIC FOREST RESERVES.

GENERAL LAWS.

CREATION OF PUBLIC FOREST RESERVES.

Public forest reserves are created under authority contained in section 24 of the act of March 3, 1891 (26 Stat., 1095), which reads as follows:

[Act of March 3, 1891 (26 Stat., 1095).]

CHAP. 561.—AN ACT to repeal timber-culture laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 24. That the President of the United States may from time to time set apart and reserve, in any State or Territory having public lands bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations; and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

* * * * *

ADMINISTRATION OF FOREST RESERVES.

Provision for the administration of forest reserves created under section 24 of the said act of March 3, 1891, is made in the act of June 4, 1897 (30 Stat., 34-36), as follows:

[Act of June 4, 1897 (30 Stat., 34-36).]

CHAP. 2.—AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ^{Appropriations for sundry civil expenses.}
That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, namely:

* * * * *

For the survey of the public lands that have been or ^{Forest re-}may hereafter be designated as forest reserves by Execu- ^{Survey of.}

tive proclamation, under section twenty-four of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber-culture laws, and for other purposes," and including public lands adjacent thereto, which may be designated for survey by the Secretary of the Interior, one hundred and fifty thousand dollars, to be immediately available: *Provided*, That, to remove any doubt which may exist pertaining to the authority of the President thereunto, the President of the United States is hereby authorized and empowered to revoke, modify, or suspend any and all such Executive orders and proclamations, or any part thereof, from time to time as he shall deem best for the public interests: *Provided*, That the Executive orders and proclamations dated February twenty-second, eighteen hundred and ninety-seven, setting apart and reserving certain lands in the States of Wyoming, Utah, Montana, Washington, Idaho, and South Dakota as forest reservations, be, and they are hereby, suspended, and the lands embraced therein restored to the public domain the same as though said orders and proclamations had not been issued: *Provided further*, That lands embraced in such reservations not otherwise disposed of before March first, eighteen hundred and ninety-eight, shall again become subject to the operations of said orders and proclamations as now existing or hereafter modified by the President.

The surveys herein provided for shall be made, under the supervision of the Director of the Geological Survey, by such person or persons as may be employed by or under him for that purpose, and shall be executed under instructions issued by the Secretary of the Interior; and if subdivision surveys shall be found to be necessary, they shall be executed under the rectangular system, as now provided by law. The plats and field notes prepared shall be approved and certified to by the Director of the Geological Survey, and two copies of the field notes shall be returned, one for the files in the United States surveyor-general's office of the State in which the reserve is situated, the other in the General Land Office; and twenty photolithographic copies of the plats shall be returned, one copy for the files in the United States surveyor-general's office of the State in which the reserve is situated; the original plat and the other copies shall be filed in the General Land Office, and shall have the facsimile signature of the Director of the Survey attached.

Vol. 26, p. 1103. *Provisos.*
President may revoke, etc. Executive orders.

Proclamations of February 22, 1897, suspended, etc.
Vol. 29, p. 895, etc.

Lands undisposed of before March 1, 1898, again subject to proclamations, etc.

Surveys to be made by Director of Geological Survey.

Plats and field notes, filing, etc.

Such surveys, field notes, and plats thus returned shall have the same legal force and effect as heretofore given the surveys, field notes, and plats returned through the surveyors-general; and such surveys, which include subdivision surveys under the rectangular system, shall be approved by the Commissioner of the General Land Office as in other cases, and properly certified copies thereof shall be filed in the respective land offices of the districts in which such lands are situated, as in other cases. All laws inconsistent with the provisions hereof are hereby declared inoperative as respects such survey: *Provided, however,* That a copy of every topographic map and other maps showing the distribution of the forests, together with such field notes as may be taken relating thereto, shall be certified thereto by the Director of the Survey and filed in the General Land Office.

Force and effect.

Inconsistent laws.

Proviso.

Maps.

All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

Vol. 26, p. 1095

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

Forest reservations, when to be established.

The Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been set aside or which may be hereafter set aside under the said act of March third, eighteen hundred and ninety-one, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of

Provisions for protection against fire, etc.

Rules and regulations.

Penalty.
Vol. 25, p. 166.
R. S., sec. 5388,
p. 1044.

the provisions of this act or such rules and regulations shall be punished as is provided for in the act of June fourth, eighteen hundred and eighty-eight, amending section fifty-three hundred and eighty-eight of the Revised Statutes of the United States.

Timber.
Appraisal and
sale of dead, etc.

For the purpose of preserving the living and growing timber and promoting the younger growth on forest reservations, the Secretary of the Interior, under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such forest reservations as may be compatible with the utilization of the forests thereon, and may sell the same for not less than the appraised value in such quantities to each purchaser as he shall prescribe, to be used in the State or Territory in which such timber reservation may be situated, respectively, but not for export therefrom. Before such sale shall take place, notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation, published in the county in which the timber is situated, if any is therein published, and if not, then in a newspaper of general circulation published nearest to the reservation, and also in a newspaper of general circulation published at the capital of the State or Territory

Notice of sale.

Payments,
how made.

where such reservation exists; payments for such timber to be made to the receiver of the local land office of the district wherein said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe; and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office, in a separate account, and shall be covered into the Treasury. Such timber, before being sold, shall be marked and designated, and shall be cut and removed under the supervision of some person appointed for that purpose by the Secretary of the Interior, not interested in the purchase or removal of such timber nor in the employment of the purchaser thereof. Such supervisor shall make report in writing to the Commissioner of the General Land Office and to the receiver in the land office in which such reservation shall be located of his doings in the premises.

Cutting and
removal.

Use of timber,
etc., by settlers,
etc.

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for

minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

Egress and ingress of settlers within reservations, etc.

Prospecting, etc.
Proviso.
Compliance with rules.

That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected: *Provided further*, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims.

Selection of land in lieu of relinquished claim.

Proviso.
Unperfected claims.

The settlers residing within the exterior boundaries of such forest reservations, or in the vicinity thereof, may maintain schools and churches within such reservation, and for that purpose may occupy any part of the said forest reservation, not exceeding two acres for each school-house and one acre for a church.

Schools and churches.

The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establish-

Civil and criminal jurisdiction.

ment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.

Waters.

All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such forest reservations are situated, or under the laws of the United States and the rules and regulations established thereunder.

Restoration
of mineral or
agricultural
lands to public
domain.

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

President
may modify any
Executive
order, etc.

The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.

* * * * *

REGULATIONS GOVERNING FOREST RESERVES UNDER THE ACT OF
JUNE 4, 1897 (30 STAT., 34-36).

[Circular.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 4, 1900.

1. Under the authority vested in the Secretary of the Interior by the act of Congress, approved June 4, 1897, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," to make such rules and regulations and establish such service as will insure the objects for which forest reservations are created under section 24 of the act of March 3, 1891 (26

Stat., 1095), the following rules and regulations are hereby prescribed and promulgated:

OBJECT OF FOREST RESERVATION.

2. Public forest reservations are established to protect and improve the forests for the purpose of securing a permanent supply of timber for the people and insuring conditions favorable to continuous water flow.

3. It is the intention to exclude from these reservations, as far as possible, lands that are more valuable for the mineral therein, or for agriculture, than for forest purposes; and where such lands are embraced within the boundaries of a reservation, they may be restored to settlement, location, and entry.

PENALTIES FOR VIOLATION OF LAW AND REGULATIONS.

4. The law under which these regulations are made provides that any violation of the provisions thereof, or of any rules and regulations thereunder, shall be punished as is provided for in the act of June 4, 1888 (25 Stat., 166), amending section 5388 of the Revised Statutes, which reads as follows:

That section fifty-three hundred and eighty-eight of the Revised Statutes of the United States be amended so as to read as follows: "Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both in the discretion of the court."

This provision is additional to the penalties now existing in respect to punishment for depredations on the public timber. The Government has, also, all the common-law civil remedies, whether for the prevention or redress of injuries, which individuals possess.

5. The act of February 24, 1897 (29 Stat., 594), entitled "An act to prevent forest fires on the public domain," provides¹—

* * * * *

Large areas of the public forests are annually destroyed by fire, originating in many instances through the carelessness of prospectors, campers, hunters, sheep herders, and others, while in some cases the fires are started with malicious intent. So great is the importance of protecting forests from fire that this Department will make special effort for the enforcement of the law against all persons guilty

¹In place of the act of February 24, 1897 (29 Stat., 594), see (on page 44) the amending act of May 5, 1900 (31 Stat., 169).

of starting or causing the spread of forest fires in the reservations in violation of the above provisions.

6. The law of June 4, 1897, for forest reserve regulations also provides that—

The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned: the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.

PUBLIC AND PRIVATE USES.

7. It is further provided that—

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

The settlers residing within the exterior boundaries of such forest reservations, or in the vicinity thereof, may maintain schools and churches within such reservation, and for that purpose may occupy any part of the said forest reservation, not exceeding two acres for each schoolhouse and one acre for a church.

All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such forest reservations are situated, or under the laws of the United States and the rules and regulations established thereunder.

8. The public in entering, crossing, and occupying the reserves, for the purposes enumerated in the law, are subject to a strict compliance with the rules and regulations governing the reserves.

9. Private wagon roads and county roads may be constructed over the public lands in the reserves wherever they may be found necessary or useful, but no rights shall be acquired in said roads running over the public lands as against the United States. Before public timber, stone, or other material can be taken for the construction of such roads, permission must first be obtained from the Secretary of the Interior. The application for such privilege should describe the location and direction of the road, its length and width, the probable quantity of material required, the location of such material, and its estimated value.

10. The permission to occupy public lands in the reserves for schoolhouses and churches, as provided for in the law, is merely a privilege, and is subject to any future disposition that may be made of such tracts by the United States.

11. The right of way in and across forest reservations for irrigating canals, ditches, flumes and pipes, reservoirs, electric power purposes, and for pipe lines, will be subject to existing laws and regulations; and the applicant or applicants for such right will be required, if deemed advisable by the Commissioner of the General Land Office, to give bond in a satisfactory surety company to the Government of the United States, to be approved by him, such bond stipulating that the makers thereof will pay to the United States for any and all damage to the public lands, timber, natural curiosities, or other public property on such reservation or upon the lands of the United States, by reason of such use and occupation of the reserve, regardless of the cause or circumstances under which such damage may occur.

12. Under the term "to regulate their occupancy and use," the Secretary of the Interior is authorized to grant such licenses and privileges, from time to time, as may seem to him proper and not inconsistent with the objects of the reservations nor incompatible with the public interests.

PASTURING OF LIVE STOCK.¹

13. * * * * * * *

RELINQUISHMENT OF CLAIMS.²

14. The law provides that where a tract within a forest reservation is covered by an unperfected bona fide claim, or by a patent, the settler or owner may, if he so desires, relinquish the tract to the United States and select in lieu thereof a tract of vacant public land outside of the reservation, open to settlement, not exceeding in area the tract relinquished. No charge is to be made for placing the new entry of record. This is in consideration of previous fees and commissions paid. Where the entry is in lieu of an unperfected one, the necessary fees in the making of final proof and issuance of certificate will be required. Where the entry is based on an unsurveyed claim, as provided for in paragraph 17 hereof, all fees and commissions attending entry must be paid, none having been paid previously.

15. Where an application is made for change of entry under the above provision, it must be filed in the land office for the district in which the lieu selection lies. The application must describe the tract selected and the tract covered by the unperfected entry, and must be accompanied by a formal relinquishment to the United States of all right, title, and interest in and to the tract embraced in said entry. There must also be filed with the application an affidavit, corroborated by at least two witnesses cognizant of the facts, showing the periods

¹ In place of paragraph 13, see circular of July 5, 1900, on page 38.

² For decisions on this subject and for the amending act of June 6, 1900 (31 Stat., 614), see under the heading "Exchange of relinquished claims and private holdings within forest reserves for outside tracts," on page 24.

and length of claimant's residence on his relinquished claim, as credit for the time spent thereon will be allowed under the new entry in computing the period of residence required by law. Residence and improvements are requisite on the new entry, the same as on the old, subject only, in respect to residence, to a deduction of the period covered by the relinquished entry.

16. Where final certificate or patent has issued, it will be necessary for the entryman or owner thereunder to execute a quitclaim deed to the United States, have the same recorded on the county records, and furnish an abstract of title, duly authenticated, showing chain of title from the Government back again to the United States. The abstract of title should accompany the application for change of entry, which must be filed as required by paragraph 15, without the affidavit therein called for.

17. In case a settler on an unsurveyed tract within a forest reservation desires to make a change of settlement to land outside of the reservation and receive credit for previous residence, he should file his application as provided for in paragraph 15, including the affidavit as to residence therein required, and describing his unsurveyed claim with sufficient accuracy to enable the local land officers to approximately determine its location.

18. All applications for change of entry or settlement must be forwarded by the local officers to the Commissioner of the General Land Office for consideration, together with report as to the status of the tract applied for.

LOCATION AND ENTRY OF MINERAL LANDS.

19. The law provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

20. Owners of valid mining locations made and held in good faith under the mining laws of the United States and the regulations thereunder, are authorized and permitted to fell and remove from such mining claims any timber growing thereon, for actual mining purposes in connection with the particular claim from which the timber is felled or removed. (For further use of timber by miners, see below, under heading "Free use of timber and stone.")

FREE USE OF TIMBER AND STONE.

21. The law provides that—

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge,

by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

This provision is limited to persons resident in the State or Territory where the forest reservation is located who have not a sufficient supply of timber or stone on their own claims or lands for the purposes enumerated, or for necessary use in developing the mineral or other natural resources of the lands owned or occupied by them. Such persons, therefore, are permitted to take timber and stone from public lands in the forest reservations under the terms of the law above quoted, strictly for their individual use on their own claims or lands owned or occupied by them within the State or Territory where such reservation is located, but not for sale or disposal, or use on other lands or by other persons.

Before any timber or stone can be taken hereunder from the forest reserves, the person entitled thereto must first make application to the forest supervisor in charge of the reservation, or part of reservation, setting forth his residence and post-office address, designating the location, amount, and value of the timber or stone proposed to be taken, the place where, and the purpose for which the said timber or stone will be used, stating, in case the application is for timber, what saw-mill or other agent, if any, will be employed to do the cutting, removing, and sawing, and pledging that no more shall be cut from the reservation than he actually needs for bona fide use on his own land or claim; and that none shall be sold, disposed of, nor used on any other than his own land or claim; and guaranteeing to remove and safely dispose of all tops, brush, and refuse cutting beyond danger of fire therefrom. Upon receipt of the application, the supervisor will immediately make investigation of the facts in the case and transmit the application, with report and recommendation, to the superintendent in charge. If, in his judgment, the application be meritorious, and no injury to the forest cover will result from the removal of such timber or stone, he will thereupon approve such application, giving the party permission to remove the timber or stone under the supervision of a forest officer: *Provided*, That where the stumpage value of the timber exceeds \$100, permission must be obtained from the Department, and for this purpose the superintendent, in all such cases, will submit the application to the Commissioner of the General Land Office, with his recommendation thereon. In case the application be approved, the superintendent will be notified and the cutting will be allowed, under supervision, as in cases where the amount involved is less than \$100.

Every forest supervisor having charge and supervision of the cutting of timber under the foregoing regulations will submit quarterly reports to the superintendent in charge of the reservation, who will

promptly forward them to the Commissioner of the General Land Office for transmission to the Department, in order that the Secretary of the Interior may be advised of the quantity of timber cut and whether the privilege granted is being abused. These reports should show the names of the persons who have applied, during the quarter, for permission to cut timber free of charge, the kind of timber applied for, the quantity, the stumpage value of the same, and the purpose for which the applicant desired to use it.

SALE OF TIMBER.¹

22. The following provision is made for the sale of timber within forest reservations in limited quantities:

For the purpose of preserving the living and growing timber and promoting the younger growth on forest reservations, the Secretary of the Interior, under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such forest reservation as may be compatible with the utilization of the forests thereon, and may sell the same for not less than the appraised value in such quantities to each purchaser as he shall prescribe, to be used in the State or Territory in which such timber reservation may be situated, respectively, but not for export therefrom. Before such sale shall take place, notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation, published in the county in which the timber is situated, if any is therein published, and if not, then in a newspaper of general circulation published nearest to the reservation, and also in a newspaper of general circulation published at the capital of the State or Territory where such reservation exists; payments for such timber to be made to the receiver of the local land office of the district wherein said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe; and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office, in a separate account, and shall be covered into the Treasury. Such timber, before being sold, shall be marked and designated, and shall be cut and removed under the supervision of some person appointed for that purpose by the Secretary of the Interior, not interested in the purchase or removal of such timber nor in the employment of the purchaser thereof. Such supervisor shall make a report in writing to the Commissioner of the General Land Office and to the receiver in the land office in which such reservation shall be located of his doings in the premises.

The sale of timber is optional, and the Secretary may exercise his discretion at all times as to the necessity or desirability of any sale.

23. While sales of timber may be directed by this Department without previous request from private individuals, petitions from responsible persons for the sale of "the dead, matured, or large growth of trees" in specified locations will be considered. Such petitions must describe the land upon which the timber stands by legal subdivisions, if surveyed; if unsurveyed, as definitely as possible by stating distance and direction from the nearest surveyed land, and stating nat-

¹For modifications of the law and regulations on this subject, see under the heading "Sale of timber," on page 36.

ural landmarks; the character of the country, whether rough, steep or mountainous, agricultural or mineral, or valuable chiefly for its forest growth. If the petition calls for matured green timber, it must show on what evidence it is asserted that the trees have attained their full growth, and it must be further shown that their removal will tend to preserve and promote the life and growth of the younger trees.

The desired timber should be described, as the case may be, according to the following classification: Standing green; down, not dead; standing dead; and down dead. If any of the desired timber be dead, state whether killed by windfall, fire, or other cause. If desired for saw timber, state the estimated quantity in feet, board measure, and value per thousand feet; state also the number of cords and value per cord of the tops and lops of the saw timber. If the entire amount of timber to be purchased is desired for cord wood, state the aggregate number of cords and value per cord. Of the live timber, state the different kinds and estimate the quantity of each kind in trees per acre. Estimate the average diameter of each kind of timber three feet above the ground, and estimate the number of trees of each kind per acre above the average diameter. State the number of trees of each kind above the average diameter it is desired to have offered for sale, with an estimate of the number of feet, board measure, therein, and value per thousand feet, and an estimate of the cord wood in the tops and lops thereof, and value per cord; or if the entire purchase is to be used for cord wood, state the aggregate number of cords and value per cord. These petitions must be filed with the supervisor in charge of the reservation, or portion of the reservation, wherein the timber is situated. Upon receipt of such an application the supervisor will attach thereto an indorsement recommending the allowance or disallowance of the application, stating the reasons on which his recommendation is based, and immediately forward to the superintendent in charge, who will promptly forward the application to this office with recommendation.

24. Upon receipt of an application to purchase timber as above, the Commissioner will cause further investigation to be made, if necessary, for the purpose of ascertaining all facts to enable intelligent action on the case. He will then transmit the application, with report and recommendation, to the Secretary of the Interior for action.

25. When a sale is ordered the Commissioner will direct the publication of notice in accordance with the law above quoted; and if the timber to be sold stands in more than one county, publication will be made in each of the counties, in addition to the required general publication. The time and place of filing bids and other information necessary to a correct understanding of the terms of each sale will be given in the notices. Before any notice is published the applicant will be required to deposit with the receiver of the local land office a sum sufficient to cover the cost of publication. In the event of the

depositor being the successful bidder this amount will be credited on the purchase price of the timber; but in case the timber is awarded to another the amount so deposited will be returned. If the applicant should fail to bid during the time fixed for filing bids, the deposit will be retained to pay the cost of advertising.

26. After a body of timber has been advertised, as above, and no sale made, the timber, in whole or in part, may, within one year thereafter, be sold by the Commissioner of the General Land Office, at private sale, for not less than the appraised value, without further notice by publication, and all notices for publication will contain a statement to this effect. Persons desiring to purchase timber at private sale should file application with the supervisor in charge of the reservation, or part of reservation, in which the timber is situated, stating the quantity of timber applied for, its location, the price offered, and the fact that the timber has already been advertised, giving the date of the advertisement. The supervisor will immediately forward such application, with report and recommendation, to the superintendent, who will promptly forward the application, with recommendation, to the Commissioner of the General Land Office. The Commissioner will examine the application and forward to the Department, with recommendation, for final action. The superintendent will be notified by the Commissioner of the action taken, and he will, in turn, notify the applicant and the proper supervisor.

27. The timber will not be sold for less than the appraised value, and when a bid or an offer to purchase at private sale has been accepted, the purchaser will be notified to make payment therefor. Payment for all timber purchased must be made to the receiver of public moneys for the land district in which the timber is situated. In sales in excess of five hundred dollars in value, allotments, at a fixed price, may be made to several bidders, to avoid monopoly. The right is reserved to reject any or all bids. A reasonable cash deposit, to be specified in the published notice, will be required to accompany each bid; and every applicant to purchase at private sale must deposit an amount equivalent to twenty per cent. of the value of the timber applied for. These deposits must be made with the receiver of public moneys, and, if sale is made, the amount will be credited on the purchase price of the timber. If sale is not made, deposits will be returned.

28. Within thirty days after notice to a bidder of an award of timber to him, payment must be made in full to the receiver for the timber so awarded; or equal payments therefor may be made in thirty, sixty, and ninety days from date of such notice, at the option of the purchaser. The purchaser must have in hand the receipt of the receiver for each payment before he will be allowed to cut, remove, or otherwise dispose of the timber covered by that payment. The timber

must all be cut and removed within one year from the date of the notice by the receiver of the award; failing to do so, the purchaser will forfeit his right to the timber left standing or unremoved and to his purchase money: *Provided*, That the limit of one year herein named may be extended by the Secretary of the Interior, in his discretion, upon the recommendation of the Commissioner of the General Land Office, and upon good and sufficient reasons being shown therefor.

29. Ample notice must be given by the purchaser, to the supervisor, of the proposed date of cutting and removal of the timber, in order that an officer may be designated to superintend the cutting. Instructions as to disposition of tops, brush, and refuse, to be given through the supervisors in each case, must be strictly complied with, as a condition of said cutting and manufacture.

30. The act provides that the timber sold shall be used in the State or Territory in which the reservation is situated, and it is not to be exported therefrom. Where a reservation lies in more than one State or Territory, this requires that the timber shall be used in the State or Territory where cut.

31. Receivers of public moneys will issue receipts in duplicate for moneys received in payment for timber, one of which will be given the purchaser, and the other will be transmitted to the Commissioner of the General Land Office in a special letter, reference being made to the letter from the Commissioner authorizing the sale, by date and initial, and with title of case as therein named. Receivers will deposit to the credit of the United States all such moneys received, specifying that the same are on account of sales of public timber on forest reservations under the act of June 4, 1897. A separate monthly account current (Form 4-105) and quarterly condensed account (Form 4-104) will be made to the Commissioner of the General Land Office, with a statement in relation to the receipts under the act as above specified.

32. Where timber has been appraised and advertised for sale and no satisfactory bid has been offered, a new appraisement and sale may be ordered after the lapse of one year, if, within that time, no application to purchase said timber at private sale, for not less than the appraised value, has been made.

33. Special instructions will be issued for the guidance of officials designated to examine and appraise timber, to supervise its cutting and removal, and for carrying out other requirements connected therewith.

BINGER HERMANN,
Commissioner.

Approved April 4, 1900.

E. A. HITCHCOCK, *Secretary.*

**EXCHANGE OF RELINQUISHED CLAIMS AND PRIVATE HOLDINGS
WITHIN FOREST RESERVES FOR OUTSIDE TRACTS.**

I. ACT OF JUNE 4, 1897; 30 Stat., 36 (see page 9).

Exchange of tracts authorized by.

Regulations under, governing exchange of tracts are contained in circular issued April 4, 1900 (see page 17), and in the following circulars and decisions:

[Circular.]

FOREST RESERVES.

[Lieu Lands Selections, Act June 4, 1897 (30 Stat., 36).]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December 18, 1899.*

REGISTERS AND RECEIVERS, UNITED STATES LAND OFFICES.

GENTLEMEN: Your attention is called to a decision by the honorable Secretary of the Interior, dated April 26, 1899, addressed to this office, which reads as follows, to wit:

The Department is in receipt of your communications of December 7 and 13, 1898, relative to applications now pending in your office to exchange lands within the limits of public forest reservations for public lands outside such reservations, under the following provisions of the act of June 4, 1897 (30 Stat., 11, 36):

“That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected: *Provided further*, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims.”

Calling attention to a circular addressed to registers and receivers, issued August 11, 1898, by your office, without the approval of the Secretary of the Interior, and also referring to page 89 of your annual report for the year ending June 30, 1898, you ask (1) whether lands within the limits of forest reservations must be agricultural in character in order to be made basis for lieu selections under the foregoing provision of the act, (2) whether the claim or title thereto must have been initiated or acquired under the settlement laws of the United States, and (3) whether timber land acquired by purchase under the act of June 3, 1878 (20 Stat., 89), but since denuded of its timber, and land acquired under a grant made to a State or a railroad company by act of Congress can be made basis for such lieu selections.

As to the first question, if by agricultural lands you mean lands the claim or patent to which is not based upon the mining laws of the United States, the question is answered in the affirmative. That the statute does not contemplate and therefore does not authorize the relinquishment or surrender of mineral lands as basis for the making of lieu selections, is shown by the provisions therein that—

“Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting,

locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservation."

* * * "And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained."

All other lands included within the limits of a public forest reservation are subject to relinquishment as basis for lieu selections, if claimed or owned as stated in the statute.

As to the second question, if by settlement laws you mean such laws as make personal settlement and residence upon the tract sought to be acquired a necessary condition to obtaining title, as in the case of the preemption and homestead laws, the question is answered in the negative. That which may be relinquished is described as "a tract covered by an unperfected bona fide claim or by a patent," and is believed to include any tract covered by any unperfected bona fide claim under any of the general land laws (except the mining laws) of the United States, or to which the full legal title has passed out of the Government and beyond the control of the land department by any means which is the full legal equivalent of a patent. The thing which was objectionable to the forest reservation policy was the presence within the limits of a forest reservation of lands held and controlled by individual claimants or owners. Whether the claim or ownership was initiated or acquired under the homestead statute, which is a settlement law, or under the timber land purchase act, which is not a settlement law, its presence is equally an obstacle to the attainment of the purpose for which the forest reservation was established. In both cases the reservation of the surrounding lands is equally prejudicial to the interests of the claimant or owner.

As to the third question, the answer is in the affirmative, subject to the qualifications that where the land is claimed under a grant made to a State or a railroad company by an act of Congress, the full legal title must have passed out of the Government and beyond the control of the land department by a patent, or by some means which is the full legal equivalent thereof. Where under the timber land purchase act, or indeed under any other statute, one has acquired land having valuable timber thereon and has removed the timber, in pursuance of a lawful right so to do, the removal of the timber does not affect his ownership of the land, and if it be included within the limits of a public forest reservation does not deprive him or the Government from receiving the benefit incident to a relinquishment of that land, and a selection of other land outside the limits of the forest reservation in lieu thereof. The statute does not make it a condition to the exchange therein authorized that the tract within the forest reservation should have retained its original and natural condition.

You will please formulate and submit to the Department circular instructions to the local land officers revoking the circular issued by your office August 11, 1898, and also embodying the views expressed herein, and in the decisions of the Department in the cases of *F. A. Hyde et al.* (28 L. D., 284) and *Emil S. Wangerheim* (28 L. D., 291). Action upon all applications for lieu lands under said act will be withheld until the circular instructions are adopted.

The decision in the case of *Hyde et al.*, *supra*, holds that—

Where an exchange of land is sought under the act of June 4, 1897, the relinquishment and selection can be made only by the claimant or owner of the land within the limits of the forest reservation.

Unsurveyed as well as surveyed land, which is vacant and open to settlement, may be selected under said act.

The words "tract covered * * * by a patent," as used in said act, embrace and include a tract to which the full legal title has passed out of the Government

and beyond the control of the land department by any means which is the full legal equivalent of a patent.

Before a selection under said act can be approved, the United States must be reinvested with all the right and title to the tract relinquished, with which it had previously parted.

The decision in the case of *Wangenheim*, *supra*, holds that—

In an exchange of lands under the act of June 4, 1897, where title to the land relinquished has passed out of the Government, or where certificate for patent thereto has issued, the selection may embrace contiguous or noncontiguous tracts, if in the same land district; but if the land relinquished is covered by an unperfected claim, to which certificate for patent has not been issued, and the law under which said claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the *lieu* selection.

Every selection of unsurveyed land must designate the same according to the description by which it will be known when surveyed, if that be practicable, or, if not practicable, must give, with as much precision as possible, the locality of the tract with reference to known landmarks, so as to admit of its being readily identified when the lines of public survey come to be extended; and the selection must be made to conform to such survey within thirty days from notice, by the local office, to the party making the selection, of the receipt at the local land office of the approved plat of the survey of the township embracing such tract.

Selections of unsurveyed lands will in no event be passed to patent until after the lands have been surveyed, nor until after the expiration of four months from the date of receipt at the local land office of the approved plat of survey of the township embracing the lands selected; and selections of surveyed lands will not be passed to patent until after the expiration of four months from the date of selection.

The purpose of the preceding paragraph is, in all instances, to give settlers or other claimants, if any there be, at the time of selection, ample opportunity to lawfully assert their claims or file their protests in the local office and to afford time for the local officers to advise the Commissioner of the General Land Office of such adverse claims before the time arrives for issuing patent under the selection.

In selections of surveyed land which has been returned as mineral, or which is within six miles of any mining claim, and in all selections of unsurveyed land, notice of the selection, commencing within twenty days thereafter, must be given, for a period of thirty days, by posting upon the land and in the local land office, and by publication at the cost of the applicant in a newspaper designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Where the selection embraces noncontiguous tracts the notice must be posted upon each tract; but such notice will not be required in any case where the selection is in lieu of "a tract covered by an unperfected bona fide claim," viz: A tract the title to which has not passed out of the United States or for which patent certificate has not issued. Notice under this paragraph will not be required in

any case of selections in States wherein the United States mining laws are not operative.

In all cases relinquishments made in pursuance of said act must be executed, acknowledged, and recorded in the same manner as conveyances of real property are required to be executed, acknowledged, and recorded by the laws of the State or Territory in which the land is situated. Where the legal title to the land has passed out of the United States, there must also be filed with the relinquishment a duly certified abstract of title showing that at the time the relinquishment was filed for record the legal title was in the party making the relinquishment and that the land was free from liability for taxes and from other incumbrance. In case the land relinquished is covered by an unperfected bona fide claim, to which certificate for patent has not issued, there must be filed a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way incumber the title to the land or any part thereof is on file or of record in his office, or if any such instrument or instruments be on file or of record therein, the certificate must show the facts; and in case certificate for patent to such land has been issued there must also be filed the certificate of the receiver of taxes for the proper county showing that the land is free from all liability for taxes.

Relinquishments by individuals of lands to which the legal title has passed out of the United States or to which certificate for patent has issued must also be executed by the wife of the claimant, if he have one, in such manner as will effectually bar any dower, homestead, or other interest on her part in or to the lands relinquished.

The forms of application (4-634 and 4-643), copies herewith, should be used in the classes of cases to which they respectively apply. Other forms will be prepared and furnished you by this office as occasion may seem to require.

The circulars of August 11, 1898, May 9, 1899, and November 15, 1899, under said act, are hereby revoked and this is substituted in their stead.

Very respectfully,

BINGER HERMANN,
Commissioner.

Approved December 18, 1899.

THOS. RYAN, *Acting Secretary.*

Where an exchange of land is sought under the act of June 4, 1897, the relinquishment and selection can be made only by the claimant or owner of the land within the limits of the forest reservation. (F. A. Hyde et al.; 28 L. D., 284.)

The words "tract covered * * * by a patent," as used in said act, embrace and include a tract to which the full legal title has passed out of the Government and beyond the control of the Land Department by any means which is the full legal equivalent of a patent. (F. A. Hyde et al.; 28 L. D., 284.)

Before a selection under said act can be approved, the United States must be reinvested with all the right and title to the tract relinquished, with which it had previously parted. (F. A. Hyde et al.; 28 L. D., 284.)

The act of June 4, 1897, in providing for an exchange of lands within forest reservations for public lands outside of said reservations does not authorize the relinquishment of mineral lands as a basis for lieu selections. (Instructions; 28 L. D., 328.)

The right of relinquishment under said act is not limited to claims initiated or titles acquired under laws that require personal settlement and residence on the land, but includes any tract covered by any unperfected bona fide claim under any of the general land laws (other than the mining laws), or to which the full legal title has passed out of the Government and beyond the control of the Land Department, by any means which is the full legal equivalent of a patent. (Instructions; 28 L. D., 328.)

The removal of timber, in pursuance of a lawful right from land acquired under statutory authority, does not deprive the owner of said land or the Government from receiving the benefit incident to an exchange of lands as provided for in said act. (Instructions; 28 L. D., 328.)

Land acquired under a grant made to a State, or railroad company, by act of Congress, is a proper basis for lieu selections under said act, provided that the full legal title thereto has passed out of the Government and beyond the control of the Land Department by patent, or some means the full legal equivalent thereof. (Instructions; 28 L. D., 328.)

In an exchange of lands under the act of June 4, 1897, where title to the land relinquished has passed out of the Government, or where certificate for patent thereto has issued, the selection may embrace contiguous or noncontiguous tracts, if in the same land district; but if the land relinquished is covered by an unperfected claim, to which certificate for patent has not issued, and the law under which said claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the lieu selection. (Emil S. Wangenheim; 28 L. D., 291.)

The right of lieu selection under the act of June 4, 1897, is expressly restricted to "vacant land open to settlement," and hence can not be allowed where the land applied for is embraced within an existing forest reservation, established by proclamation of the President under section 24, act of March 3, 1891. (E. S. Gosney; 29 L. D., 593.)

The act of June 4, 1897, with respect to lieu land selections, was intended to provide for extinguishing private title to such lands only as would be a part of an established forest reservation if it were not for their private ownership. (Santa Fé Pacific Ry. Co.; 29 L. D., 597.)

- A homestead entry covering lands within the limits of a forest reservation, of record at the date of the proclamation establishing the reservation, is effective to except the lands covered thereby from the effect of the proclamation only so long as the entryman continues to comply with the law. On the relinquishment of the entry the exception declared in the proclamation ceases to be operative and the lands at once become a part of the reservation and, consequently, can not form a basis for a selection in lieu of forest reserve lands. (E. S. Gosney; 30 L. D., 44.)
- The requirement of posting and publication of notice, under the circular regulations of December 18, 1899, in the case of a lieu selection under the act of June 4, 1897, is not applicable to a selection theretofore regularly accepted and approved. (A. J. Harrell; 29 L. D., 553.)
- Lands granted to railroad companies can not be made bases for lieu selections under the act of June 4, 1897, except in cases where the full legal title to such lands has passed out of the Government and beyond the control of the Land Department, by a patent, or by some means which is the full legal equivalent thereof. (Instructions; 29 L. D., 594.)
- A relinquishment tendered under the act of June 4, 1897, of land embraced within a forest reservation, with a view to a selection of lands in lieu thereof, should not be accepted in the absence of an accompanying application to make such selection. (William S. Tevis; 29 L. D., 575.)
- A person relinquishing land in a forest reservation, with a view to making a selection in lieu thereof, under the act of June 4, 1897, should, at the time of such relinquishment, designate the land which he desires in lieu of that relinquished, and such designation should embrace a tract or tracts equal in area to that relinquished. (Instructions; 29 L. D., 578.)
- Directions given for the disposition of cases where relinquishments have been presented with selections in partial satisfaction only of the claim under the relinquishment. (Instructions; 29 L. D., 578.)
- A selection under the act of June 4, 1897, in lieu of land within a forest reservation, embraced within a patent, or patent certificate, may be made by a duly authorized attorney in fact. As to selections in lieu of unperfected claims, the right to act through another depends upon the law under which the claim is held. (Instructions; 29 L. D., 580.)
- If a selection is in lieu of land covered by a patent, or patent certificate, the nonmineral affidavit may be made by any credible person having the requisite personal knowledge of the premises. In the case of a selection in lieu of an unperfected claim, the nonmineral affidavit should be made as required in the law under which the claim is held. (Instructions, 29 L. D., 580.)

The act of June 4, 1897, makes no provision for the issuance of scrip on the relinquishment of lands included within forest reservations. (Opinion, 28 L. D., 472.)

The provisions made in said act for an exchange of land included within forest reservations, and covered by an unperfected bona fide claim or by patent, are applicable only to forest reservations established by executive action under section 24, act of March 3, 1891, and do not extend to reservations, or national parks, created by special acts of Congress. (Opinion, 28 L. D., 472.)

An application to select lands under the act of June 4, 1897, must be rejected where the lands offered as a basis for such selection are in any manner encumbered, so that the United States can not, by the acceptance of a relinquishment of the lands offered, be reinvested with all the right and title with which it had previously parted. (Edgar A. Coffin, 30 L. D., 15.)

By relinquishment and reconveyance to the United States, under the exchange provisions of the act of June 4, 1897, of lands within the limits of a forest reserve, and the selection of other lands in lieu thereof, the party making such relinquishment and selection acquires a right to have the selection approved, if there is otherwise no objection thereto, of which he can not be divested by the subsequent elimination from the boundaries of the forest reserve of the lands in lieu of which the selection is made. (Gideon F. McDonald, 30 L. D., 124.)

APPROXIMATION OF AREAS.

There is no authority for applying the rule of approximation permitted in entries under the homestead and other laws to cases of exchange of lands under the act of June 4, 1897; but the rule that "a slight difference in the acreage of the tract relinquished and selected will not be deemed an inequality in quantity," may be followed in proper cases arising under the exchange provisions of said act. (Opinion, 30 L. D., 105.)

[Circular.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 31, 1900.

REGISTERS AND RECEIVERS, UNITED STATES LAND OFFICES.

GENTLEMEN: In the matter of forest-reserve lieu selections, act June 4, 1897 (30 Stat., 36), your attention is called to the fact that on July 11, 1900, the Department decided that the rule of approximation laid down in the cases of Julius Cramm (17 L. D., 205) and Henry P. Sayles (22 L. D., 88) is not applicable to such selections, and that the receipt of any money tendered in payment of excessive area in the tract or tracts selected over the relinquished or reconveyed land is not authorized by the said act.

In said decision the Department further holds that—

Paragraph 11 of the regulations under the provisions of the act of July 1, 1898 (30 Stat., 597), for the adjustment of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, was prepared to meet conditions similar to those under the act of 1897 (supra),

and that the same may be followed in proper cases arising under said act.

The said paragraph reads as follows:

Selections will be limited to a quantity of land not exceeding that relinquished, but since all selections must be according to legal subdivisions which generally approximate but do not always embrace the same area, a slight difference in the acreage of the tract relinquished and selected will not be deemed an inequality in quantity.

You will therefore govern your action in the premises accordingly.

Very respectfully,

BINGER HERMAN,
Commissioner.

II. ACT OF JUNE 6, 1900 (31 Stat., 614).

Amends the lieu selection provisions in the act of June 4, 1897 (30 Stat., 36).

[Act of June 6, 1900 (31 Stat., 614).

CHAP. 791.—An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June thirtieth, nineteen hundred and one, namely:

* * * * *

That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the act of June fourth, eighteen hundred and ninety-seven, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof:

* * * * *

Appropriations for sundry civil expenses.

Selections of land in lieu of tracts covered by an unperfected bona fide claim, etc.

Proviso.
—limit of time to make selection.

Instructions have been issued under this act as follows:

[Circular.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 21, 1900.

REGISTERS AND RECEIVERS, UNITED STATES LAND OFFICES.

GENTLEMEN: You are advised that on and after October 1, 1900, lieu selections under the act June 4, 1897 (30 Stat., 36), will be confined to surveyed lands. See act making appropriations for sundry civil expenses for fiscal year ending June 30, 1901, "Public—No. 163."

Acknowledge receipt hereof.

Very respectfully,

BINGER HERMANN,
Commissioner.

SCHOOL LANDS IN FOREST RESERVES.

Where a forest reservation includes within its limits a school section surveyed prior to the establishment of the reservation, the State, under the authority of the first proviso to section 2275, Revised Statutes, as amended by the act of February 28, 1891, may be allowed to waive its right to such section and select other land in lieu thereof.

The decision herein of December 27, 1894, 19 L. D., 585, recalled and vacated.

Instructions of December 19, 1893, 17 L. D., 576, modified. (State of California, 28 L. D., 57.)

By the act of June 21, 1898, a grant, *in presenti*, of school lands is made to the Territory of New Mexico; and under the provisions of section 2275, Revised Statutes, as amended by the act of February 28, 1891, said Territory may relinquish its claim to such school sections as it may be entitled that are included within the limits of a forest reserve, and select other lands in lieu thereof. (Territory of New Mexico, 29 L. D., 365.)

ELIMINATION OF AGRICULTURAL LANDS.

ACT OF JUNE 4, 1897; 30 Stat., 36. (See page 9.)

Authorizes elimination from forest reservations of lands found to be better adapted for agricultural purposes than for forest uses.

If agricultural lands are improvidently included in a forest reservation, they can be eliminated therefrom only by a proclamation of the President or by the action of Congress, and, until so eliminated, such lands will continue a part of the reservation. (E. S. Gosney, 30 L. D., 44.)

* * * * *

Relative to the authority of the President to establish forest reservations and to the character of the land which may be embraced

therein, section 24 of the act of March 3, 1891, *supra*, and the provisions of the act of June 4, 1897, *supra*, bearing thereon, being *in pari materia*, must be construed together to ascertain the intention of Congress in the premises. In said section 24 it is provided:

That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

In the said act of June 4, 1897, it is provided that—

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

And that—

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain.

The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.

A very large discretion is evidently lodged in the President by these statutory provisions. His judgment is to be guided and controlled only along general lines. In the said legislation of 1891 practically no limit is placed upon the exercise of his authority to establish forest reservations from time to time except that the lands reserved must be "public lands wholly or in part covered with timber or undergrowth." In the act of 1897 his authority is further limited only to the extent of the declaration therein of the purposes of such legislation, and that the inclusion in forest reservations "of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes" is not intended to be authorized thereby. Recognizing that lands "better adapted for mining or for agricultural purposes than for forest usage" had already been and might thereafter be included in such reservations, that act made provision for their elimination when ascertained as therein directed.

The language quoted in the two instances immediately preceding is worthy of particular notice. It is not simply lands that are merely

agricultural in character that are not to be included in forest reservations, or, if included, may be restored to the public domain, but "lands more valuable * * * for agricultural purposes than for forest purposes," or "for forest usage." The language used, it is evident, was carefully and wisely chosen. In determining whether any particular tract or body of land ought to be included in a forest reservation, or, if included, ought to be eliminated therefrom, its value to the reservation for forest purposes or for purposes of a reservation generally, and the effect of its omission or elimination therefrom are to be weighed against its value for agricultural purposes. Its relative position in the proposed or existing reservation may be of much importance in such determination. If immediately within the reservation boundary, for instance, its separation from the reservation might be a matter of small concern; but if at some distance within the reservation, and especially if many tracts be thus eliminated, the consequences thereof might, and probably would be, very injurious, affecting not only the integrity of the reservation, but its maintenance and control, and perhaps eventually rendering abortive the purposes for which it was established. Considerations like these may render the nature of the soil of such tracts or bodies of land, or their condition as to the growth of trees or other vegetation thereon, of minor importance in the determination; and when the tract is small, consisting of but 40 acres, and far within the limits of the lands reserved, as in the present instance, the mere fact that it might be nearly or even entirely devoid of timber and distinctly agricultural land would not, under ordinary circumstances, if otherwise subject to inclusion in a forest reservation, justify its exception or elimination therefrom.

It was not intended by the act of June 4, 1897, to exclude from reservation small tracts, here and there, within the limits of a forest reservation, because of the fact that said tracts were not covered with timber. (Jared Woodbridge, 29 L. D., 531.)

While lands embraced within a forest reservation may be excluded, because shown to be more valuable for agricultural than for forest purposes, until formally restored to the public domain such lands are not subject to general disposition, and no rights can be acquired by the attempted entry thereof. (Jared Woodbridge, 29 L. D., 531.)

Lands within the limits of a forest reserve, which at the date of its establishment are covered by a lawful preemption filing of record, are excepted from such reserve subject to claimant's continued compliance with law; but in the event of the cancellation of such filing the land at once becomes a part of the reserve. (John E. Henry, 30 L. D., 158.)

MINERAL LANDS WITHIN FOREST RESERVES.

ACT OF JUNE 4, 1897; 30 Stat., 36. (See page 9.)

Makes mineral lands in forest reserves subject to location and entry under the general mining laws in the usual manner. (See circular of April 4, 1900, page 18.)

COAL LANDS.

The words, "the existing mining laws of the United States," are to be construed, in legislative enactments, as embracing sections 2347 to 2352, inclusive, of the Revised Statutes, commonly known as the coal land law, unless an intention to the contrary is expressed. (T. P. Crowder, 30 L. D., 92.)

Coal lands are mineral lands within the meaning of the act of June 4, 1897, and as such are subject to entry, when found in forest reservations, the same as other mineral lands within such reservations. (T. P. Crowder, 30 L. D., 92.)

COAL LANDS WITHIN FOREST RESERVES.

(See "Mineral Lands within Forest Reserves.")

FREE USE OF TIMBER AND STONE.

Act of June 4, 1897; 30 Stat., 35. (See page 9.)

Contains the following provision:

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Regulations under, governing the free use of forest reserve timber, are contained in circular of April 4, 1900. (See page 18.)

No authority to permit free use of forest reserve timber by corporations, municipal or otherwise. See departmental decision as follows:

DEPARTMENT OF THE INTERIOR,
Washington, June 25, 1900.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: By your office letter "P" of the 20th instant, you submitted for my consideration an application by the board of county commissioners of Uintah County, Utah, dated at Vernal in said State, May

24, 1900, for permission to cut 65,000 feet of timber, board measure, of the total value of \$42.25, estimated at 65 cents per thousand feet from trees of mature growth on certain lands within the limits of the Uintah Forest Reserve, and for permission to have said timber manufactured into lumber at the Griffin sawmill within said reserve, said timber being desired for use in the county court-house now in process of erection at Vernal, the county seat of said county, said application accompanied by the letter of the forest supervisor, George F. Bucher, and the forest superintendent, W. T. S. May, recommending the granting of said application.

The petition, as presented, is for permission to cut said timber, free of charge for the purpose named. There is no authority under the law or the regulations of this Department to permit the free use of timber in forest reservations by corporations, municipal or otherwise.

The petition is therefore rejected. * * *

Very respectfully,

E. A. HITCHCOCK,
Secretary.

FREE USE OF FOREST RESERVE TIMBER IS A PERSONAL PRIVILEGE.

Under the regulations of the Department, this (the free use of forest reserve timber) is a personal privilege, and it will not be permitted to be used for commercial purposes. (Secretary to Commissioner of the General Land Office, October 29, 1900, in cases of Crandell, Evans and Garcia, Black Mesa Forest Reserve, Arizona.)

SALE OF TIMBER.

I. ACT OF JUNE 4, 1897; 30 Stat., 35. (See page 12.)

Makes provision for the sale of timber within forest reserves in limited quantities.

Regulations under, governing sales of timber, are contained in circular of April 4, 1900. (See page 20.)

II. ACT OF JUNE 6, 1900 (31 Stat., 661).

Amends the act of June 4, 1897 (30 Stat., 35).

The full text of the act of June 6, 1900, is as follows:

[Act of June 6, 1900 (31 Stat., 661)].

CHAP. 864.—AN ACT to amend chapter two of the laws passed by the first session of the Fifty-fifth Congress of the United States, being an Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June fourth, eighteen hundred and ninety-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That chapter two of the laws of the first session of the Fifty-fifth Congress, being an Act entitled "An Act mak-

Public lands.
Appraisal and
sale of dead, etc.,
timber.

ing appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June fourth, eighteen hundred and ninety-seven, be, and the same is hereby, amended by striking out the following words where the same appear in said Act, commencing with the word "Before," in line thirty-six, on page thirty-five of volume thirty of the United States Statutes at Large, and ending with the word "exists," in the forty-third line of said volume and page, as follows: "Before such sale shall take place notice thereof shall be given by the Commissioner of the General Land Office, for not less than sixty days, by publication in a newspaper of general circulation published in the county in which the timber is situated, if any is therein published, and if not then in a newspaper of general circulation published nearest to the reservation, and also in a newspaper of general circulation published at the capital of the State or Territory where such reservation exists," and insert in lieu thereof the following: "Before such sale shall take place notice thereof shall be given by the Commissioner of the General Land Office, for not less than thirty days, by publication in one or more newspapers of general circulation, as he may deem necessary, in the State or Territory where such reservation exists: *Provided, however,* That in cases of unusual emergency the Secretary of the Interior may, in the exercise of his discretion, permit the purchase of timber and cord wood in advance of advertisement of sale at rates of value approved by him and subject to payment of the full amount of the highest bid resulting from the usual advertisement of sale: *Provided further,* That he may, in his discretion, sell without advertisement, in quantities to suit applicants, at a fair appraisement, timber and cord wood not exceeding in value one hundred dollars stumpage: *And provided further,* That in cases in which advertisement is had and no satisfactory bid is received, or in cases in which the bidder fails to complete the purchase, the timber may be sold, without further advertisement, at private sale, in the discretion of the Secretary of the Interior, at not less than the appraised valuation, in quantities to suit purchasers: *And provided further,* That the provisions of this Act shall not apply to existing forest reservations in the State of California, or to reservations that may be hereafter created within said State."

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amended.

Notice of sale.

Provisos.
Emergency,
etc., sales in advance of advertisement.

Private sale where bid unsatisfactory, etc.

California forest reservations excepted.

PASTURING OF LIVE STOCK.

ACT OF JUNE 4, 1897; 30 Stat., 35. (See page 9.)

Under the authority granted the Secretary of the Interior therein, to regulate the occupancy and use of forest reservations, the following regulations have been prescribed respecting the pasturing of live stock:

[Circular.]

AMENDMENT TO THE RULES AND REGULATIONS GOVERNING
FOREST RESERVES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 5, 1900.

Paragraph 13 of the Rules and Regulations Governing Forest Reserves, issued April 4, 1900, is hereby amended so as to read as follows:

PASTURING OF LIVE STOCK.

13. The pasturing of sheep and goats on the public lands in the forest reservations is prohibited: *Provided*, That in the States of Oregon and Washington, where the continuous moisture and abundant rain-falls of the Cascade and Pacific coast ranges make rapid renewal of herbage and undergrowth possible, the Commissioner of the General Land Office may, with the approval of the Secretary of the Interior, allow the limited grazing of sheep within the reserves, or parts of reserves, within said States: *And also provided*, That when it shall appear that the limited pasturage of sheep and goats in a reserve, or part of a reserve, in any State or Territory will not work an injury to the reserve, that the protection and improvement of the forests for the purpose of insuring a permanent supply of timber and the conditions favorable to a continuous water flow, and the water supply of the people will not be adversely affected by the presence of sheep and goats within the reserve, the Commissioner of the General Land Office may, with the approval of the Secretary of the Interior, also allow the limited grazing of sheep and goats within such reserve. Permission to graze sheep and goats within the reserve will be refused in all cases where such grazing is detrimental to the reserves or to the interests dependent thereon, and upon the Bull Run Forest Reserve in Oregon, and upon and in the vicinity of Crater Lake and Mount Hood, or other well-known places of public resort or reservoir supply. The pasturing of live stock, other than sheep and goats, will not be prohibited in the forest reserves so long as it appears that injury is not being done the forest growth and water supply, and the rights of others are not thereby jeopardized. Owners of all live stock will be

required to make application to the Commissioner of the General Land Office for permits to graze their animals within the reserves. Permits will only be granted on the express condition and agreement on the part of the applicants that they will agree to fully comply with all and singular the requirements of any law of Congress now or hereafter enacted relating to the grazing of live stock in forest reserves, and with all and singular the requirements of any rules and regulations now or hereafter adopted in pursuance of any such law of Congress; and upon failure to comply therewith the permits granted them will be revoked and the animals removed from the reserves. Permits will also be revoked for a violation of any of the terms thereof or of the terms of the applications on which based.

BINGER HERMANN,
Commissioner.

Approved, July 5, 1900.

E. A. HITCHCOCK,
Secretary of the Interior.

PENALTY FOR UNAUTHORIZED GRAZING IN FOREST RESERVES.

In response to an inquiry by the Department of the Interior as to whether a criminal prosecution will lie to punish a person who grazes sheep in a forest reserve in violation of section 5388, United States Revised Statutes, amended by act of June 4, 1888 (25 Stat., 166), the Solicitor-General decided the question in the affirmative.

The following is a copy of his decision:

DEPARTMENT OF JUSTICE,
Washington, D. C., November 17, 1898.

THE SECRETARY OF THE INTERIOR.

SIR: Section 5388 of the Revised Statutes, as amended by the act of June 4, 1888 (25 Stat., 166), provides as follows:

Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the court.

The act of June 4, 1897, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes," provides (30 Stat., 35):

The Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been set aside or which may be hereafter set aside under the said act of March 3, 1891, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests

thereon from destruction; and any violation of the provisions of this act or such rules and regulations shall be punished as is provided for in the act of June 4, 1888, amending section 5388 of the Revised Statutes of the United States.

Under the authority thus conferred the Secretary of the Interior, on June 30, 1897, promulgated certain rules and regulations for the purpose of regulating the occupancy and use of the forest reservations and to preserve the forests thereon from destruction, among which was the following:

13. The pasturing of live stock on the public lands in forest reservations will not be interfered with so long as it appears that injury is not being done to the forest growth, and the rights of others are not thereby jeopardized. The pasturing of sheep is, however, prohibited in all forest reservations, except those in the States of Oregon and Washington, for the reason that sheep grazing has been found injurious to the forest cover, and therefore of serious consequence in regions where the rainfall is limited. The exception in favor of the States of Oregon and Washington is made because the continuous moisture and abundant rainfall of the Cascade and Pacific Coast ranges make rapid renewal of herbage and undergrowth possible, etc.

In view of the foregoing, you request my opinion whether a criminal prosecution will lie to punish a person who grazes sheep in a forest reservation in violation of the regulation quoted.

I recognize the existence of the salutary rule that Congress can not delegate its legislative power so as to authorize an administrative officer, by the adoption of regulations, to create an offense and prescribe its punishment. But here the statute proclaims the punishment for an offense which, in general terms, is defined by law, the regulation dealing only with a matter of detail and administration necessary to carry into effect the object of the law. The protection of the public forests is intrusted to the Secretary of the Interior. Section 5388 makes it an offense, punishable by fine and imprisonment, for any person wantonly to destroy any timber on a public reservation. In furtherance of this policy, the act of June 4, 1897, directs the Secretary to make provision for the protection of the forests and authorizes him to regulate the use and occupancy of the forest reservations and to preserve the forests thereon from destruction, making for such purpose proper rules and regulations.

Any violation of such rules and regulations is, by the statute, made an offense punishable as provided in section 5388. By this law the control of the occupancy and use of these reservations is handed over to the Secretary for the purpose of preserving the forests thereon, and any occupancy or use in violation of the rules and regulations adopted by him is made punishable criminally. It seems to me Congress has a right to do this. Suppose Congress had provided that the occupation or use of a forest reservation by any person, without permission of the Secretary, should be a misdemeanor. Would not this be a valid exercise of legislative power? The present statute does no more. The regulation is reasonable and necessary. It restrains no one in the

enjoyment of any natural or legal right. To use the language of Mr. Chief Justice Fuller in *In re Kollock*, 165 U. S., 526, 533—

The regulation was in execution of, or supplementary to, but not in conflict with, the law itself, and was specifically authorized thereby in effectuation of the legislation which created the offense.

Your question, therefore, is answered in the affirmative.

Very respectfully,

JOHN K. RICHARDS,
Solicitor-General.

Approved.

JOHN W. GRIGGS,
Attorney-General.

(See also *United States v. Tygh Valley Land and Live Stock Co.*; 76 Fed. Rep., 693.)

RENTING OR LEASING LANDS NEAR OR ADJACENT TO SPRINGS WITHIN FOREST RESERVATIONS.

ACT OF FEBRUARY 28, 1899 (30 Stat., 908).

Authorizes the Secretary of the Interior to rent or lease suitable spaces and portions of ground near or adjacent to mineral, medicinal, or other springs, within public forest reserves.

[Act of February 28, 1899 (30 Stat., 908).]

CHAP. 221—AN ACT to authorize the Secretary of the Interior to rent or lease certain portions of forest reserve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Secretary of the Interior be, and hereby is, authorized, under such rules and regulations as he from time to time may make, to rent or lease to responsible persons or corporations applying therefor suitable spaces and portions of ground near, or adjacent to, mineral, medicinal, or other springs, within any forest reserves established within the United States, or hereafter to be established, and where the public is accustomed or desires to frequent, for health or pleasure, for the purpose of erecting upon such leased ground sanitariums or hotels, to be opened for the reception of the public. And he is further authorized to make such regulations, for the convenience of people visiting such springs, with reference to spaces and locations, for the erection of tents or temporary dwelling houses to be erected or constructed for the use of those visiting such springs for health or pleasure. And the Secretary of the Interior is authorized to prescribe the terms and duration and the compensation to be paid for the privileges granted under the provisions of this Act.

Forest reserves.
Authority conferred to lease grounds in, for hotels, etc.

Regulations.

SEC. 2. That all funds arising from the privileges granted hereunder shall be covered into the Treasury of the United States as a special fund, to be expended in the care of public forest reservations.

Funds to be used for care of forest reserves.

The act of February 28, 1899, authorizing the Secretary of the Interior to lease lands adjacent to mineral springs within forest reserves for hotel or sanitarium purposes, contemplates the leasing of land not wholly occupied by the hotel or sanitarium, whenever such action is necessary to the proper conduct of such hotel or sanitarium, and to make the beneficial properties of the springs available to the public. (Opinion, 28 L. D., 386.)

RIGHTS OF WAY ACROSS FOREST RESERVES.

I. ACT OF JUNE 4, 1897 (30 Stat., 36). (See page 13.)

Contains the following provision:

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations. (See regulations under, contained in circular of April 4, 1900, page 16.)

The act of June 4, 1897, provides for the control and administration of all public lands set apart as forest reserves by the President, under section 24, act of March 3, 1891, but makes no grant of right of way through these reservations, and does not give the Secretary of the Interior any new or additional authority to permit the use of a right of way through them or within their boundaries, and is not applicable to reservations created by special act of Congress. (Opinion, 28 L. D., 474.)

II. CANALS, DITCHES, AND RESERVOIRS IN FOREST RESERVES.

The grant made by the act of March 3, 1891, of rights of way for canals, ditches, and reservoirs over public lands and reservations of the United States was limited, by the terms of said act, to companies formed for purposes of irrigation, and while section 2 of the act of May 11, 1898, amendatory of the act of 1891, permits the use of rights of way, granted under said act of 1891, for other purposes, it does not enlarge the class of grantees, or make a new grant; hence, under these acts, the Secretary of the Interior has no authority to grant the right to establish a reservoir, or construct a ditch for mining or domestic purposes, within the limits of the Yosemite Park, or any forest reserve in California. (Opinion, 28 L. D., 474.)

[Also Hamilton Irrigation Company (21 L. D., 330) and Crystal Lake Irrigation and Power Company (27 L. D., 315), construing the act of May 14, 1896; 29 Stat., 120.]

III. "DEFICIENCY" ACT OF MARCH 3, 1899 (30 Stat., 1233).

Contains the following provision:

That in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby.

For right of way privileges in respect to individual forest reservations, see under the heading "Local laws" (page 45).

OCCUPATION OF LANDS FOR SCHOOL AND CHURCH PURPOSES.

ACT OF JUNE 4, 1897 (30 Stat., 36). (See page 13.)

Contains the following provision:

The settlers residing within the exterior boundaries of such forest reservations, or in the vicinity thereof, may maintain schools and churches within such reservation, and for that purpose may occupy any part of said forest reservation, not exceeding 2 acres for each schoolhouse and 1 acre for a church. (See regulations in circular of April 4, 1900, page 16.)

Permission to occupy lands within a forest reserve for church and school purposes, under the provisions of the act of June 4, 1897, asked for on behalf of a corporation, may be granted to the petitioners as individuals, where it appears that they are settlers residing in the vicinity of said reserve. (T. S. C. Lowe et al., 28 L. D., 89.)

FIRES ON THE PUBLIC DOMAIN.

[Circular—Forest fires.]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., June 18, 1900.

For the information of all concerned, attention is called to the following act of Congress, approved May 5, 1900, entitled "An act to amend an act entitled 'An act to prevent forest fires on the public domain,' approved February twenty-fourth, eighteen hundred and ninety-seven."

Registers and receivers, United States land offices, special agents and forest officers, General Land Office, should promptly report to the proper United States attorney all information they may receive relative to the violation of the provisions of this law.

BINGER HERMANN,

Commissioner.

Approved, June 18, 1900.

E. A. HITCHCOCK,

Secretary.

[Act of May 5, 1900 (31 Stat., 169).]

CHAP. 349.—AN ACT to amend an Act entitled "An act to prevent forest fires on the public domain," approved February twenty-fourth, eighteen hundred and ninety-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to prevent forest fires on the public domain," approved February twenty-fourth, eighteen hundred and ninety-seven, be, and the same is hereby, amended so as to read as follows:

That any person who shall willfully or maliciously set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States having jurisdiction of the same shall be fined in a sum not more than five thousand dollars or be imprisoned for a term of not more than two years, or both.

SEC. 2. That any person who shall build a fire in or near any forest, timber, or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same. Any person failing to do so shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States having jurisdiction of the same shall be fined in a sum not more than one thousand dollars or be imprisoned for a term of not more than one year, or both.

SEC. 3. That in all cases arising under this act the fines collected shall be paid into the public-school fund of the county in which the lands where the offense was committed are situated.

PENALTY FOR DESTRUCTION OF FIRE-WARNING NOTICES.

The following instructions have been issued by the General Land Office, under dates of October 19 and 24, 1900, to the several forest officers:

The tearing down of a fire-warning poster is a destruction of Government property, and a defiance of the law thereby promulgated to the public. The act is willful and malicious.

The going upon a Government reservation and committing such an act is a willful trespass, and is punishable under the penalty for trespass in the act of June 4, 1897 (30 Stat., 34-36), providing for the administration and protection of forest reserves.

All persons guilty of tearing down or otherwise defacing or destroying fire notices should be prosecuted as above indicated; and you will instruct your men accordingly.

FISH AND GAME LAWS.

ENFORCEMENT OF.

The "Sundry Civil" acts of March 3, 1899 (30 Stat., 1095), and June 6, 1900 (31 Stat., 614), and the "Urgent Deficiency" act of February 9, 1900 (31 Stat., 21), contain the following provision:

"*Provided further,* That forest agents, superintendents, supervisors, and all other persons employed in connection with the administration and protection of forest reservations shall, in all ways that are practicable, aid in the enforcement of the laws of the State or Territory in which said forest reservation is situated in relation to the protection of fish and game."

SURVEYS OF FOREST RESERVES AND OF ADJACENT LANDS.

I. ACT OF JUNE 4, 1897; 30 Stat., 34. (See page 9.)

Provides for the survey by the United States Geological Survey of the public lands that have been or may hereafter be designated as forest reserves, under section 24 of the act of March 3, 1891 (30 Stat., 1095), including public lands adjacent thereto; and prescribes requirements respecting the returns to be made of such surveys.

ADJACENT LANDS.

In carrying out the provisions of the act of June 4, 1897, with respect to the survey of forest reservations, the phrase "public lands adjacent thereto," should be construed to mean townships, either fractional or entire, actually adjoining such reservations. (Instructions, 25 L. D., 140.)

II. ACT OF MARCH 3, 1899 (30 Stat., 1097).

Contains the following provision:

"And provided further, That hereafter all standard, meander, township, and section lines of the public land surveys shall, as heretofore, be established under the direction and supervision of the Commissioner of the General Land Office, whether the lands to be surveyed are within or without reservations, except that where the exterior boundaries of public forest reservations are required to be coincident with standard, township, or section lines such boundaries may, if not previously established in the ordinary course of the public land surveys, be established and marked under the supervision of the Director of the United States Geological Survey whenever necessary to complete the survey of such exterior boundaries."

LOCAL LAWS.

RIGHTS OF WAY ACROSS FOREST RESERVES.

I. GRAND CANYON FOREST RESERVE.

[Act of May 18, 1898 (30 Stat., 418).]

CHAP. 343.—AN ACT granting the Santa Fe and Grand Canyon Railroad Company right of way for railroad purposes through the Grand Canyon Forest Reserve in northern Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Santa Fe and Grand Canyon Railroad Company, Santa Fe and Grand Canyon Railroad granted right of way through Grand Canyon Forest Reserve. a corporation created and existing under the laws of the Territory of Arizona, is authorized to construct and maintain a railroad over and through the Grand Canyon Forest Reserve (heretofore reserved from entry or settle-

Vol. 27, p. 1061.	ment and set apart as a public reservation by Benjamin Harrison, President of the United States, by proclamation of date the twentieth day of February, eighteen hundred and ninety-three), said railroad to enter the said Grand Canyon Forest Reserve at such a point on the southern boundary of said reserve in Coconino County, Arizona, as may be found to be the most feasible for the route of said railroad, running in a northerly direction from Williams, Arizona; thence proceeding by the most practicable route through a point at or near Lombard and the Bright Angel Trail to the Indian Gardens, and from said Bright Angel Trail in an easterly direction to the Little Colorado River; also to proceed by such side tracks, extensions, switches, and spurs as may be necessary to reach the various groups of mines in said forest reserve, all in said Coconino County; said right of way being
Location.	granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted:
Restrictions, etc. Chap. 152, vol. 18, p. 482, made applicable.	<i>Provided</i> , That no timber shall be cut by said railroad company for any purpose outside of the rights of way herein granted.
Proviso. Timber.	

II. PIKE'S PEAK TIMBER LAND RESERVE.

[Act of June 27, 1898 (30 Stat., 493).]

CHAP. 501.—AN ACT granting right of way through the Pikes Peak Timber Land Reserve and the public lands to the Cripple Creek District Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Cripple Creek District Railway granted right of way through Pikes Peak Timber Land Reserve.	That the Cripple Creek District Railway Company, a corporation created and existing under the laws of the State of Colorado, be, and it hereby is, authorized to construct and maintain a railway over and through the Pikes Peak Timber Land Reserve (heretofore reserved from entry or settlement and set apart as a public reservation by Executive order), said railway to enter said Pikes Peak Timber Land Reserve at such a point on the eastern or northern boundary thereof in El Paso County, Colorado, as may be found to be the most feasible for the route of said railway, running in a westerly direction from Colorado Springs, Colorado, thence proceeding by the most practicable route
Location.	

through the reserve to the western boundary thereof; also, to proceed by such side tracks, extensions, switches, and spurs as may be necessary to reach any groups of mines in said forest reserve, all in said El Paso County; and the said railway company is hereby also granted right of way through the public lands to the town of Cripple Creek, in the said State of Colorado; said right of way being granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railroad company for any purpose outside of the rights of way herein granted.

Right of way
to Cripple
Creek, Col.

Vol. 18, p. 482.

Proviso.
Cutting of
timber limited.

[Act of July 8, 1898 (30 Stat., 729).]

CHAP. 645.—AN ACT granting right of way through the Pike's Peak Timber Land Reserve and the public lands to the Cripple Creek Short-Line Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

That the Cripple Creek Short-Line Railway Company, a corporation created and existing under the laws of the State of Colorado, be, and it hereby is, authorized to construct and maintain a railway over and through the Pikes Peak Timber Land Reserve (heretofore reserved from entry or settlement and set apart as a public reservation by Executive order), said railway to enter said Pikes Peak Timber Land Reserve at such a point on the eastern or northern boundary thereof in El Paso County, Colorado, as may be found to be the most feasible for the route of said railway, running in a westerly direction from Colorado Springs, Colorado, thence proceeding by the most practicable route through the reserve to the western boundary thereof; also, to proceed by such side tracks, extensions, switches, and spurs as may be necessary to reach any groups of mines in said forest reserve, all in said El Paso County; and the said railroad company is hereby also granted right of way through the public lands to the town of Cripple Creek, in the said State of Colorado; said right of way being granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-

Cripple Creek
Short-Line Rail-
way granted
right of way
through Pikes
Peak Timber
Land Reserve.
Vol. 27, p. 1006,
etc.

Location.

Right of way
to Cripple
Creek, Colo.

Vol. 18, p. 482.

Provisos.
Timber.

five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railroad company for any purpose outside of the rights of way herein granted: *And provided further*, That the right of way herein granted shall not interfere with the right of way on Government land through the Pikes Peak Timber Land Reserve, granted by act of Congress, entitled: "An act granting right of way through the Pikes Peak Timber Land Reserve and the public lands to the Cripple Creek District Railway Company," approved June twenty-seventh, eighteen hundred and ninety-eight.

Cripple Creek
District Rail-
way.

Ante, p. 493.

III. SAN FRANCISCO MOUNTAINS FOREST RESERVES.

[Act of January 10, 1899 (30 Stat., 783).]

CHAP. 44.—AN ACT granting the Saginaw Southern Railroad Company a right of way for railroad purposes through the San Francisco Mountains Forest Reserve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Saginaw
Southern Rail-
road granted
right of way
through San
Francisco
Mountains For-
est Reserve.

That the Saginaw Southern Railroad Company, a corporation created and existing under the laws of the Territory of Arizona, is authorized to construct and maintain a railroad over and through the San Francisco Mountains Forest Reserve (heretofore reserved from entry and settlement and set apart as a public reserve by William McKinley, President of the United States, by proclamation dated the seventeenth day of August, eighteen hundred and ninety-eight). Said railroad to be constructed upon and across the said San Francisco Mountains Forest Reserve from a point on the line of the Santa Fe Pacific Railroad Company at the town of Williams, in the county of Coconino, Territory of Arizona, thence in a southerly direction by the most practical route to the town of Jerome, in the county of Yavapai, Territory of Arizona; also to construct and maintain such side tracks, extensions, switches, and spurs as may be necessary to the convenient construction and maintenance of said railroad in the said counties of Coconino and Yavapai; said right of way being granted subject to the rules and restrictions and carrying all the rights and privileges of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: *Provided*, That no timber shall be cut by said railroad company for any purpose outside of the right of way herein granted.

Post, procla-
mations, p. 136.
Location.

Vol. 18, p. 482.

Proviso.
Cutting tim-
ber limited.

[Act of June 6, 1900 (31 Stat., 657).]

CHAP. 794.—AN ACT to grant right of way over Government lands for a pipe line for the conveyance of water to Flagstaff, Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That a right of way for a pipe line through sections twenty-six, thirty-six, township twenty-three north; sections two, twelve, fourteen, twenty-two, and twenty-eight, township twenty-two north, and sections four and sixteen, township twenty-one north, all in range seven east, Gila and Salt River meridian, in the San Francisco Forest Reserve, in the county of Coconino and Territory of Arizona, is hereby granted to the town of Flagstaff, a municipal corporation in said county and Territory, to the extent of the ground occupied by said pipe line and twenty-five feet on each side of the center line of the same.

Flagstaff, Ariz., granted right of way through San Francisco Forest Reserve, etc., for pipe line.

Also the right to take from the lands adjacent to the lands hereby granted material, earth, stone, and timber necessary for the construction, maintenance, repair, and control of said pipe line.

Use of materials.

SEC. 2. That said pipe line when constructed shall be maintained and controlled exclusively for the use and benefit of the said town of Flagstaff by the municipal authorities thereof, and for the purpose only of conveying water through said pipe line to said town for its exclusive use and benefit.

Control.

SEC. 3. That this act shall take effect and be in force from and after its passage.

Effect.

IV. SAN GABRIEL FOREST RESERVE.

[Act of February 28, 1899 (30 Stat., 910).]

CHAP. 223.—AN ACT to grant to the Pasadena and Mount Wilson Railway Company right of way and certain lands for railroad purposes through the San Gabriel Forest Reserve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

there is hereby granted to the Pasadena and Mount Wilson Railway Company, a corporation organized and existing under the laws of the State of California, and to its successors and assigns, authority to construct, maintain, and operate a railway for a distance of nine miles, more or less, over and through the San Gabriel Forest Reserve (heretofore reserved from entry and settlement and set apart as a public reservation by Benjamin Harrison, President of the United States, by proclamation of date the

Pasadena and Mount Wilson Railway granted right of way through San Gabriel Forest Reserve.

Vol. 27, p. 1049.

Location.	<p>twentieth day of December, anno Domini eighteen hundred and ninety-two), from the place in said forest reserve known as Rubio to the summit of the mountain known as Mount Lowe, in the Sierra Madre Mountains, in the county of Los Angeles and State of California, the course of said railway to be the same as that of the railroad now operated by said railway company from Rubio aforesaid to Alpine Tavern, the present terminus of said railroad, and from thence to the summit of said Mount Lowe, by the most practicable route; said right of way being hereby granted to said Pasadena and Mount Wilson Railway Company, but subject to the rights, privileges, rules, and restrictions of an act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, anno Domino eighteen hundred and seventy-five, said act being hereby made applicable to the right of way hereby granted: <i>Provided</i>, That no timber shall be cut by said railway company for any purpose outside of the right of way herein granted: <i>And provided further</i>, That said company shall give bond as provided by the regulations of the Secretary of the Interior prescribed under the law relating to forest reserves.</p>
Vol. 18, p. 482.	
<i>Provisos.</i> Timber cutting restricted.	<p>SEC. 2. That in addition to such of the public ground as said railway company will be entitled to take, under and in accordance with the provisions of the said act entitled "An act granting to railroads the right of way through the public lands of the United States," approved March third, anno Domini eighteen hundred and seventy-five, for station buildings, depots, machine shops, side tracks, turn-outs, and water stations, the Secretary of the Interior is hereby authorized to sell, at the rate of one dollar and twenty-five cents per acre, to the said Pasadena and Mount Wilson Railway Company, its successors and assigns, for stations, hotels, astronomical observatories, seminaries of learning, and such other buildings and purposes as may be required in connection with said railway line, the following-described parcels of land along said right of way, to wit: The unsurveyed land described as the west half of the northwest quarter of the northwest quarter of section two, when regularly protracted, in township one north, range twelve west, San Bernardino meridian, containing twenty acres, more or less.</p>
Sale to company of additional land for hotels, etc.	<p>Also the tract or parcel of land described as follows, to wit: Beginning at a point in the easterly line of the two-hundred-foot right of way of the Pasadena and Mount Wilson Railway Company, which point is north twenty-seven degrees thirty minutes west nine hundred feet from</p>

the point where said right-of-way line crosses the north line of section three, township one north, range twelve west; running thence north sixty-two degrees forty minutes east five hundred feet; thence north twenty-seven degrees thirty minutes west one thousand eight hundred and fifty feet; thence west three hundred and fifty feet, more or less, to the easterly line of the right of way aforesaid; thence southeasterly along said right of way to the place of beginning, containing twenty acres, more or less.

Also the unsurveyed lands described as the west half of the west half of the southeast quarter and the east half of the east half of the southwest quarter of section twenty-six, township two north, range twelve west, San Bernardino meridian, when regularly protracted, containing eighty acres, more or less.

Also a tract of land consisting of forty acres at the terminus of said right of way at Mount Lowe: *Provided*, Minerals, etc., excepted. That all minerals, including coal, in all of said right of way and lands hereby granted are reserved to the United States.

SEC. 3. That the said right of way and lands for stations, hotels, astronomical observatories, seminaries of learning, and other purposes granted hereby are intended for the use of said Pasadena and Mount Wilson Railway Company, its successors and assigns, and in case of the sale of said Pasadena and Mount Wilson Railway and its appurtenances by act of the corporation or under decree of court, all of the rights and benefits hereby granted shall vest in the owner or owners for the time being of said railway line and appurtenances. Right of way, etc., to vest in successor, etc.

HOMESTEAD ENTRIES IN THE BLACK HILLS FOREST RESERVE.

SPECIAL PRIVILEGES ALLOWED.

The act of March 3, 1899 (30 Stat., 1095), contains the following provisions:

Provided further, That any person who made actual, bona fide settlement and improvement and established residence thereon in good faith, for the purpose of acquiring a home, upon lands more valuable for agriculture than for any other purpose, within the boundaries of the Black Hills Forest Reservation, in the State of South Dakota, prior to September nineteen, eighteen hundred and ninety-eight, may enter, under the provisions of the homestead law, the lands embracing his or her improvements, not to exceed one hundred and sixty acres; and if the lands are so situated that the entry of a legal subdivision, according Black Hills Forest Reservation, S. Dak. Certain settlers granted homestead entries. —surveys.

Proviso.
Not to prej-
dice public in-
terests.

to existing law, will not embrace the improvements of such settler or claimant, he or she may make application to the surveyor-general of the State of South Dakota to have said tract surveyed at the expense of the claimant by metes and bounds and a plat made of the same and filed in the local land office, showing the land embraced in his original settlement which he desires to enter, not to exceed one hundred and sixty acres, and thereupon he shall be allowed to enter said land, as per said plat and survey, as a homestead; and the Secretary of the Interior shall make the necessary rules and regulations to carry this act into effect: *Provided*, That in any case where, upon investigation by a special agent of the Interior Department and after due and proper hearing, it shall be established that an entry interfered with the general water supply, or was detrimental in any way to the public interests, or infringed upon the rights and privileges of other citizens, the Secretary of the Interior shall have authority to cause said entry to be modified or amended or in his discretion to finally cancel the same.

INSTRUCTIONS.

Under the above provisions in the act of March 3, 1899 (30 Stat., 1095), instructions were addressed to the local officers at Rapid City, S. Dak., by the General Land Office, and approved by the Department on September 22, 1899, as follows:

“Until the system of public surveys is extended over a township, and a plat thereof duly filed in your office in accordance with the circular of October 21, 1885 (4 L. D., 202), the notice given to be modified, however, and to state that entries will be allowed only under said act of March 3, 1899, no entries can be allowed for lands in the Black Hills Forest Reservation, S. Dak.

“A party desiring to enter land in said reservation will be required to file, in addition to the usual application (Form 4-007) and affidavits (Forms 4-062 and 4-063), his affidavit, corroborated by that of two other persons, showing that he is entitled to the benefits of the act cited. He will be required to state the date of his actual bona fide settlement, the date he established residence on the land for the purpose of acquiring a home thereon, for what period of time he has maintained a residence on the land, the character and value of his improvements, and the extent of his cultivation of the land, as well as for what the land is principally valuable. Such additional affidavit, as well as the affidavits of the corroborating witnesses, may be made before any officer qualified to administer oaths in homestead cases.

“Should it satisfactorily appear that an applicant is entitled to the benefits of said act, you will allow his entry to go to record.

"Before an entry can be allowed for a claim which can not be adjusted to the existing legal subdivisions without detriment to the interests of the settler, it will be necessary to have the claim surveyed in accordance with the instructions for that purpose (approved by the honorable Secretary of the Interior, September 22, 1899, a copy of which is hereto attached), and the plat thereof filed in your office."

SURVEY SETTLERS' CLAIMS IN BLACK HILLS FOREST RESERVATION, S. DAK.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

WASHINGTON, D. C., *September 7, 1899.*

The UNITED STATES SURVEYOR-GENERAL,

Huron, S. Dak.

SIR: The act of March 3, 1899, making appropriation for sundry civil expenses of the Government for the fiscal year ending June 30, 1900, under the head of "Protection and administration of forest reserves" (Pamphlet Laws, page 1095), contains the following:

"*Provided further*, That any person who made actual bona fide settlement and improvement and established residence thereon in good faith, for the purpose of acquiring a home, upon lands more valuable for agriculture than for any other purpose, within the boundaries of the Black Hills Forest Reservation, in the State of South Dakota, prior to September nineteenth, eighteen hundred and ninety-eight, may enter, under the provisions of the homestead law, the lands embracing his or her improvements, not to exceed one hundred and sixty acres; and if the lands are so situated that the entry of a legal subdivision, according to existing law, will not embrace the improvements of such settler or claimant, he or she may make application to the surveyor-general of the State of South Dakota to have said tract surveyed at the expense of the claimant by metes and bounds and a plat made of the same and filed in the local land office, showing the land embraced in his original settlement which he desires to enter, not to exceed one hundred and sixty acres, and thereupon he shall be allowed to enter said land, as per said plat and survey, as a homestead; and the Secretary of the Interior shall make the necessary rules and regulations to carry this act into effect: *Provided*, That in any case where, upon investigation by a special agent of the Interior Department, and after due and proper hearing, it shall be established that an entry interfered with the general water supply, or was detrimental in any way to the public interests, or infringed upon the rights and privileges of other citizens, the Secretary of the Interior shall have authority to cause said entry to be modified or amended, or in his discretion to finally cancel the same."

By said act settlements within the Black Hills Forest Reservation, in the State of South Dakota, made prior to September 19, 1898, upon lands which are more valuable for agricultural than for any other

purpose, are protected by extending to the settlers the privilege of entering the land so settled upon under the provisions of the homestead law. As an entry can not be made under the homestead law prior to the Government survey of the land desired to be entered, an entry can not be made under this law prior to the extension of the Government survey over the lands thus settled upon. By such survey it will be disclosed whether the improvements of the settler can be protected by entry according to legal subdivisions without a special survey, and until such time a special survey will not be ordered. Where upon the Government survey, however, it is discovered that an entry according to legal subdivisions will not include the improvements of the settler, he may adjust his claim to the legal subdivisions established by the Government survey or apply to the surveyor-general of South Dakota for a special survey of his claim. When an application is made for the survey of a claim under the provisions of this act, the settler may designate a surveyor, to whom the requisite instructions will be issued from your office, for the survey and marking of the boundaries of his claim and such connections with prior surveys as may be necessary to a proper platting of the claim and of the fractions of public lands surrounding the same, consequent upon the survey of such claim.

Under the law a special survey is required to be at the expense of the settler, and the surveyor performing the work must look to the settler for his compensation, without recourse to the United States, and a provision to that effect should be embodied in the instructions issued to such surveyor by your office. The amount of compensation to the surveyor will be left to private arrangement between the settler and the surveyor.

Where the surveyor designated by the settler is not a United States deputy surveyor or a United States deputy mineral surveyor, it will be necessary to submit with the application satisfactory evidence of the professional skill and ability of such surveyor. Such surveyor will be required to furnish a bond in the penal sum of \$500 for the faithful execution of the work.

The application for survey should contain a complete description of the claim, date of settlement, improvement, and established residence, character, extent, and approximate value of improvements, character of the land, and location by township, range, and section (or sections) of the public land surveys. The application should be accompanied by a diagram showing as accurately as practicable the contour of the claim. The statements contained in the application for survey should be verified under oath.

It is not the intention of this act to permit any one settler to take long and narrow strips of land on both sides of a stream, and thus monopolize the water privileges, to the detriment of other settlers, and claims should be taken in square form, *as nearly as it is practicable to do so*, and include the improvements of the settlers. In no case should

the claims be of less width than that of the smallest legal subdivision (20 chains). Whenever an application shall be received for the survey of a settler's claim in such shape as appears to you to be detrimental to the public interests, or to infringe upon possible rights of other citizens, you will, if in doubt as to the propriety of making a survey in the shape applied for, forward the application for the consideration of this office, stating the reasons why, in your opinion, the survey should not be allowed as applied for.

The necessary office work connected with these surveys will be performed by the regular clerical force of your office.

Your office is regarded as being particularly conversant with the varied requirements and details pertaining to the public-land surveys, and I therefore desire that you prepare and submit for my consideration a draft of general instructions for the execution of surveys under the above-quoted provisions of law, prescribing the method of running and marking the boundaries of settlers' claims and their connection with and closings on the lines of the prior surveys in the townships in which such claims are located.

As this law provides that the lands to be surveyed and entered thereunder must be "more valuable for agriculture than for any other purpose," it is expressly desired that the instructions to surveyors making surveys under this act require such surveyors to embody in their field notes an accurate description of the character of the lands surveyed with regard to their value for any purpose other than agriculture.

The plats of these surveys will be prepared in triplicate, as usual with public-land surveys, and the duplicate plats for the files of this office will be accompanied by duly authenticated transcripts of the field notes of the surveys.

Very respectfully,

BINGER HERMANN,
Commissioner.

DEPARTMENT OF THE INTERIOR,

September 22, 1899.

Approved:

E. A. HITCHCOCK, *Secretary.*

TIMBER ON MINING CLAIMS IN CERTAIN FOREST RESERVATIONS IN COLORADO.

[Act of February 20, 1896, 29 Stat., 11.]

AN ACT to open forest reservations in the State of Colorado for the location of mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the forest reservations in the State of Colorado, known as the Pikes Peak Forest Reserve, the Plum Creek Forest Reserve, and the South Platte Forest Reserve, established by Executive proclamations dated, respectively, March eighteenth, eighteen hundred and ninety-two, June twenty-third, eighteen hundred and ninety-two, and December ninth, eighteen hundred and ninety-two, in the State of Colorado, in accordance with section

twenty-four of the act of March third, eighteen hundred and ninety-one, from and after the passage of this act shall be open to the location of mining claims thereon for gold, silver, and cinnabar, and that title to such mining claims may be acquired in the same manner as it may be acquired to mining claims upon the other mineral lands of the United States for such purposes: *Provided*, That all locations of mining claims heretofore made in good faith within said reservations, and which have been held and worked in the same manner as mining claims are held and worked under existing law upon the public domain, are validated by this act.

SEC. 2. That owners of valid mining locations made and held in good faith under the terms of this act shall be, and are hereby, authorized and permitted to fell and remove from such mining claims any timber growing thereon, for actual mining purposes in connection with the particular claim from which the timber is felled or removed, but no other timber shall be felled or removed from any other portions of said reservations by private parties for any purpose whatever.

EXTENT OF TIMBER PRIVILEGES UNDER ACT OF FEBRUARY 20, 1896.

[29 Stat., 11.]

Commissioner of the General Land Office to the Secretary of the Interior, October 16, 1896, in the timber trespass case of Kendall, Townsend, and Walter.

* * * * *

Inasmuch as the act of February 20, 1896 (29 Stat., 11), opening the Pikes Peak Forest Reserve for the location of mining claims, confines the felling and removing of timber from mining claims to "actual mining purposes in connection with the particular claim from which the timber is felled or removed," it appears that Townsend and Walter, in cutting timber on their claims for sale for the purpose of raising money for the development of the claims, exceeded the privileges allowed in said act.

A reasonable construction of the wording of this act appears to confine the use of timber on such claims within a limit directly similar to that defined by the United States Supreme Court in dealing with the question whether timber might be taken from an unperfected homestead claim and sold for the purpose of expending the money derived from the sale in improvements on the claim; upon which point it was held that, while, perhaps, timber might be taken from such claims to be exchanged for timber or lumber to be applied direct to improvements thereon, yet it could not be sold to raise money with which to make improvements on the land. (Case of *Shiver v. United States*, 159 U. S., 491.)

It accordingly appears that the timber taken from said mining claims, for use as stated, was procured in trespass.

* * * * *

Approved by the Secretary of the Interior November 5, 1896.

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